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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON

9
10 In re:
11 V.S. INVESTMENT ASSOC., LLC,

12 Chapter 11
13 NO. 20-11541-CMA

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28 **RESPONSE TO BRMK LENDING, LLC'S
MOTION TO DISMISS BANKRUPTCY
OR FOR RELIEF FROM STAY AND
ABANDONMENT TO PROCEED WITH
RECEIVERSHIP**

Debtor(s).

COMES NOW the debtor, V.S. Investment Assoc., LLC, and responds to BRMK Lending, LLC's Motion to Dismiss Bankruptcy or For Relief from Stay and Abandonment to Proceed with Receivership. In support of its response Debtor states as follows:

I. FACTUAL BACKGROUND

V.S. Investment Assoc., LLC ("Debtor") is a property development company with two members, Valintin and Viktoriya Stelmakh. It currently owns a fully developed four-unit complex located at 2463, 2465, 2467, and 2469 South College Street, Seattle Washington 98144 (the "College Street Properties") and an undeveloped property located at 319 75th Street, Everett, WA 98203 (the "75th Street Property").

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1 **A. College Street Properties**

2 The College Street Properties make up debtor's largest asset valued at an estimated
3 \$3,600,000.00. (ECF No. 1, Schedule A/B) It includes four townhomes that are all encumbered
4 by liens in the following priority and amount.

Creditor	Recording Date	Approx Amount Due
BRMK Lending, LLC	4/21/2016	\$4,236,395.95 *
Paul Greben	1/16/2020 1/21/2020 amended	\$ 598,500.00
Ecocline Exc. & Utilities LLC	1/30/2020	\$ 137,205.00

10 **amount based on proof of claim*

11 Debtor acquired the College Street Properties from Barcelo Homes Inc. ("Barcelo") in
12 2016. (Declaration of Valentin Stelmakh). PBRELFI, LLC ("PBRELFI") was the first position
13 deed of trust holder on the property at that time. *Id.* Although it was legally owned by Barcelo,
14 PBRELFI was the primary actor in selling the property to Debtor. *Id.* PBRELFI advertised it to
15 Debtor as a permit ready "turnkey" development project. *Id.* Debtor was also told that the project
16 could be completed within a year. *Id.*

18 At the time of the sale, PBRELFI agreed to provide Debtor with necessary funding to
19 complete the project and extended a loan for \$1,880,000.00 secured by a deed of trust on the
20 College Street Properties and a deed of trust on Stelmakhs' personal residence located at 4415
21 Priest Point Drive Northwest, Marysville, WA 98271 (the "Priest Point Property"). *Id.* However,
22 PBRELFI required the Stelmakhs to transfer their personal residence to a separate legal entity
23 before it would issue the loan. *Id.* The Stelmakhs created V.S. Developing, LLC for this
24 purpose and the property was transferred by quit claim deed. *Id.*

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1 Soon after purchasing the College Street Properties, Debtor discovered it was not permit
2 ready. *Id.* The City of Seattle required Debtor to obtain additional permits to complete the
3 project. *Id.* As a result, debtor was unable to finish construction according to the projected
4 timeline and incurred unexpected expenses. *Id.* Debtor eventually completed the project and
5 obtained certificates of occupancy January 2020. *Id.*
6

7 In 2019, BRMK Lending, LLC, successor by merger to PBREL ("BRMK") began
8 pressuring Debtor to sell the four units on the College Street Properties even though certificates
9 of occupancy had not yet been issued. *Id.* Debtor agreed to list the units for sale October 2019.
10 *Id.*

11 Debtor received offers on each unit that it believed were less than market value. *Id.*
12 After being pressure by BRMK and promised it would release its liens on both the College Street
13 Properties and the Priest Point Property, Debtor accepted the offers. *Id.* Debtor accepted two
14 offers October 2019, one offer November 2019 and one offer December 2019 for a total of
15 \$2,845.000.00. (ECF No. 27, Declaration of Stuart Heath, Exhibits B-E).
16

17 In January 2019, after receiving certificates of occupancy, Debtor was approached by
18 Stephanie Jenkins, Asset Manager for BRMK who believed the College Street Properties could
19 be sold at a higher price. (See Declaration of Valentin Stelmakh). In order to cancel the current
20 contracts, BRMK needed to put Debtor in a receivership and relist the properties. *Id.* Debtor was
21 also assured by Mrs. Jenkins that it would not sell the Priest Point Property in the receivership
22 and told Debtor there was no need to seek independent counsel in the state court receivership
23 action. *Id.* A receiver was appointed February 2020.
24

1 On March 9, 2020 the receiver accepted an offer to purchase both the College Street
2 Properties and the Priest Point Property to Alpine Homes NW, LLC (“Alpine Homes”) for
3 \$3,352,000.00. (ECF No. 27, Declaration of Stuart Heath). According to BRMK’s own motion,
4 it was commonly understood that the College Street Properties accounted for \$2,850,000.00 and
5 the Priest Point Property accounted for \$507,000.00. Alpine Homes defaulted on the agreement.
6

7 On May 21, 2020 the receiver accepted offers on all four units from Ahmet and Stephanie
8 Gurbuz for a combined price of \$2,850,000.00. *Id.* At the same time, the receiver accepted an
9 offer from the Gurbuz’s to purchase the Priest Point Property for \$550,000.00. *Id.* The College
10 Street Properties are currently listed on MLS for \$3,600,00.00, and the Priest Point Property is
11 valued at \$1,050,000.00. (Declaration of Valentin Stelmakh, Exhibit A).

12 Debtor filed this chapter 11 on May 29, 2020. Since filing, Debtor has hired Shawn Perry
13 as real estate agent of the bankruptcy estate. *Id.* On June 2, 2020, the same date this Court
14 authorized his employ, Mr. Perry staged and listed the College Street Properties on MLS. *Id.* A
15 3D rendering of the listing can be seen at <https://my.matterport.com/show/?m=CL98eEZMfFG>.
16 *Id.*

17 On June 3, 2020 Debtor received an offer on 2469 S. College Street for \$1,025,000.00
18 and has a motion to approve the sale free and clear of liens set for July 31, 2020. Debtor has had
19 several interested buyers and expects offer on the other properties in the coming weeks. *Id.*
20

21 **B. 75th Street Property**

22 Debtor’s second largest asset is the 75th Street Property with an estimated value of
23 \$1,500,000.00. (ECF No. 1, Schedule A/B). The property is currently encumbered by liens in
24 the following priority and amount:
25

1 Creditor	2 Recording Date	3 Approx Amount Due
2 Cyan Funding LLC	3 7/30/2019	4 \$ 925,000.00
3 Sandler Architects LLC	4 10/16/2019	5 \$ 10,000.00 est

6 The 75th property is permitted to build ten 3-4 bedroom townhomes that when completed
 7 can each be sold for \$585,000.00 or more. (Declaration of Valentin Stelmakh). Debtor anticipates
 8 the project will be take 12 – 18 months to complete. *Id.* Level Capital, LLC., successor to Cyan
 9 Funding, LLC, has recently agreed to provide Debtor with approximately \$2,400,000.00 in funding
 10 to complete the project. *Id.* Debtor intends to file a motion with this court to approve the loan and
 11 to move forward with construction. *Id.* According to Schedule A/B, Debtor expects the 75th Street
 12 Property will be valued at a minimum of \$5,850,000.00 upon completion.

13 II. RESPONSE

14 A. BRMK's Motion to dismiss should be denied.

15 A chapter 11 bankruptcy case may be dismissed or converted for cause. 11 U.S.C.
 16 §1112(b). BRMK specifically outlines §1112(b)(4)(A), (B), and (M) as “cause”, but none of
 17 these apply in this case. Moreover, when determining whether a case should be dismissed or
 18 converted, the court must consider what would be in the best interest of all creditors, not just the
 19 largest and most vocal creditor. *In re Sullivan*, 522 B.R. 604, 613 (9th Cir. BAP 2014).

20 Here Debtor’s primary reason for filing this case was to prevent BRMK from selling its
 21 assets at a discount. In addition, Debtor wanted to save the Priest Point Property, which is the
 22 primary residence of its members. On two occasions the receiver attempted to sell the College
 23 Street Properties for \$750,000.00 less than market value. On two occasions, the receiver
 24

1 attempted to sell the Priest Point Property for nearly \$500,000.00 less than market value.
2 Allowing the receivership to continue would cause substantial and continuing loss to the estate
3 and would not be in the best interest of all creditors.

4 Additionally, BRMK's interactions with Debtor have proven to lack good faith. On
5 multiple occasions, BRMK or its predecessor have been less than forthcoming with the debtor.
6 Debtor was told the College Street Property was permit ready, but additional permits were
7 required to complete the project. Prior to obtaining certificates of occupancy, BRMK pressured
8 Debtor to accept offers on the property for less than market value. Then, when BRMK thought it
9 could get more money after certificates were issued they put Debtor into a receivership so it
10 could reject those contracts. BRMK also promised it would not sell the Priest Point Property in
11 the receivership but still attempted to sell it anyway. Dismissing this case to allow the
12 receivership to continue would only serve the best interest of BRMK to the detriment of all other
13 creditors and the estate.

14 Debtor has acted in the best interest of all creditors and the estate. Only a month after
15 filing Debtor has hired a real estate agent who immediately listed the College Street Properties
16 for sale. Debtor has accepted an offer on one of the College Street Properties that was \$140,000
17 higher than any previous offer accepted by the receiver. Debtor has filed a motion to approve
18 that sale. Debtor has obtained permits to develop the 75th Street Property into a 10-townhome
19 complex. Debtor has also obtained financing, subject to court approval, to fund that project.
20 Debtor is best capable and should be allowed to propose a feasible chapter 11 plan to reorganize
21 that would be in the best interest of all creditors and the estate.

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2 **B. Debtor Filed in Good Faith**

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4 A lack of good faith in filing a bankruptcy petition may constitute "cause" warranting
5 dismissal under Section 1112(b). See Marsch v. Marsch (In re Marsch), 36 F.3d 825, 828-29 (9th
6 Cir. 1994). "Good faith is lacking only when the debtor's actions are a clear abuse of the
7 bankruptcy process. . . . Good faith depends on an amalgam of factors, not a specific fact or
8 facts." Margitan v. Hanna (In re Hanna), 2018 WL 1770960, at *5 (9th Cir. BAP Apr. 13, 2018)
9 (quotations and citations omitted). In determining whether a case was filed in the absence of
10 good faith, courts may consider factors such as whether:

- 11
- 12 1. The debtor has only one asset;
13 2. The debtor has an ongoing business to reorganize;
14 3. There are any unsecure creditors;
15 4. The debtor has any case flow or sources of income to sustain a plan of
16 reorganization or to make adequate protection payments; and
17 5. The case is essentially a two-party dispute capable of prompt adjudication in state
18 court.

19 *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582-83 (9th Cir. BAP 1995). The movant
20 bears the burden of establishing bad faith by a preponderance of the evidence. *In re Sullivan* at
21 614. Most importantly, a court must consider whether dismissal is in the best interest of all
22 creditors. *Id.*

23 Here, BRMK fails to meet its burden to establish bad faith. Debtor has two large assets,
24 the College Street Properties and the 75th Street Property. The 75th Street Property is permitted
25 for a 10-townhome complex and ready to begin construction. Debtor has a lender willing to
26 finance the project subject to court approval. Debtor also has more than 10 unsecured creditors

1 with estimated claims more than \$400,000.00. In addition, there are undersecured creditors with
2 more than \$700,000.00 in claims. Debtor can feasibly reorganize and propose and effectuate a
3 confirmable plan that is in the best interest of all creditors and the estate.

4

5 **C. Relief from the Automatic Stay Should be Denied.**

6 Relief from stay should be denied because BRMK is or can be adequately protected. 11
7 U.S.C § 362(d) provides that relief from stay shall be granted -

- 8 1) for cause, including the lack of adequate protection of an interest in property of such
9 party in interest;
10 2) with respect to a stay of an act against property under subsection (a) of this section, if
11 (A) the debtor does not have an equity in such property; and
12 (B) such property is not necessary to an effective reorganization

13 11 U.S.C. § 361 provides:

14 When adequate protection is required under section 362, 363, or 364 of this title of an
15 interest of an entity in property, such adequate protection may be provided by—
16

- 17 (2) providing to such entity an additional or replacement lien to the extent that such
18 stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest
19 in such property;

20 Here, BRMK is or can be adequately protected. According to BRMK's motion, it has a
21 secured claim of \$4,287,350.29. While Debtor disputes this amount, if accurate, BRMK is fully
22 secured with its two deeds of trust. The College Street Properties are valued at \$3,600,000.00
23 and is listed for sale at that price. The Priest Point Property is valued at \$1,050,000.00 based on
24 a market analysis. With an estimated cost of sale at 6%, BRMK is fully secured.

25 In addition, Debtor can provide adequate protection, if necessary, by giving BRMK an
26 additional lien in its 75th Street Property. The property is valued at \$1,500.000.00 with a deed of
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trust valued at \$925,000.00, and a worker's lien estimated at \$10,000.00. Assuming a 6% cost of sale, there is approximately \$470,000 in equity available to provide BRMK with an additional lien as adequate protection, if necessary. Thus, relief from the automatic stay should be denied.

III. CONCLUSION

Allowing Debtor to liquidate assets in the bankruptcy and propose an plan for reorganization involving the development of the 10-townhome project would be in the best interest of *all* creditors and the estate. Wherefore, Debtor respectfully requests the Court issue an order denying BRMK's Motion to Dismiss and denying BRMK's Motion for Relief from Stay and Abandonment to Proceed with Receivership.

Dated this 9th day of July, 2019

/s/Brad L Puffpaff
Brad L Puffpaff, WSBA 46434
Attorney for Debtor

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